IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

:::

O R D E R

R.S.E.B. & Ors.
Vs.
Shyam Lal & Anr.

S.B. CIVIL WRIT PETITION NO.2882/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 18th September, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.R.S. Saluja, Advocate for the petitioner.
Mr.Sanjay Mathur, Advocate for the respondents.

BY THE COURT

Under challenge in the present writ petition is the award dated 29th January, 2002 passed by the learned Tribunal-cum-Labour Court, Udaipur (for short the 'Tribunal') whereby it has directed the respondents to pay to the petitioner salary in the regular pay scale on the post of LDC w.e.f. 01.12.1979 on the principal of equal pay for equal work holding that the respondent

was working from that date on such post. An industrial dispute was referred to the learned Tribunal for its adjudication on the question whether action of the Management in not granting regular pay scale on the post of LDC w.e.f. 01.12.1979 and further on the post of Assistant from 01.04.1982 to 26.06.1984 was legal and justified and if not, what relief the workman was entitled to.

The learned Tribunal after hearing arguments of the parties, answered the reference partly in favour of the workman holding that although the action of the Management in not regularizing the services of the petitioner on the post of LDC w.e.f. 01.12.1979 was legal and justified. It however held that according to the principles of equal pay for equal works, action of the Management in not making payment of regular pay scale on the post of LDC on which the petitioner workman was actually working w.e.f. 01.12.1979 was not legal and justified. It therefore, directed the Management to grant salary and other emoluments to the workman on the post of LDC w.e.f. 01.12.1979 within a period of one month form the date of passing of the impugned award.

Learned counsel has argued that in the present case, even though the respondent-workman was claiming salary in the regular pay scale on the post of LDC w.e.f. 01.12.1979 and has actually been awarded such salary, but the reference of the

dispute was made to the Tribunal by the appropriate Government as delayed as 17th October, 1997. According to him, in view of inordinate delay of 18 years in making of the reference, the learned labour court ought not to have entertained the claim. He while relying on the judgment of Hon'ble Supreme Court in the case of M.R. Gupta vs. Union of India & Ors. reported in 1995 SCC L&S 1273, argued that in the cases where the reference is made after considerable delay, the learned Tribunal may by exercising its discretion mould the relief.

On the other hand, learned counsel for the respondent workman argued that since the respondent actually worked on the post of LDC w.e.f. 01st December, 1979, award of the learned Tribunal in granting him benefit of pay scale on the post of LDC on which he was actually working cannot be faulted with. It has been argued that the petitioner was subsequently appointed on the post of LDC vide order dated 26th July, 1984, therefore, the disputed period was confined to the period from 01.12.1979 to 26.06.1984. For the relief limited to the grant of regular pay scale on the principles of equal pay for equal work, no interference is required to be made by this Court.

I have heard arguments of learned counsel for the parties at some length, but in my view, controversy now having been narrowed down in a short compass whether the respondent-

workman in spite of having raised a reference delayed, should be held entitled to regular pay scale on the post of LDC w.e.f. 01st December, 1979 even if learned Tribunal has record a finding of fact on the aspect of his actual working from that date on such post. In the face of the fact that the respondent raised industrial dispute belatedly, in my view he cannot be granted actual monetary benefits for the period from 01.12.1979 to 26.06.1984 on which date he was eventually appointed on the post of LDC. In view of the fact that the learned Tribunal has recorded a finding that number of labourers who were earlier junior to the respondent-workman were regularized on the post of LDC earlier and were in receipt of higher scale of pay than him, ends of justice would be met by directing the respondent to only notionally grant the benefit of pay on the post of LDC to the respondent-workman w.e.f. 01st December, 1979 although the respondent shall not be entitled to receive actual arrears for such period.

The writ petition is partly allowed and the award passed by the learned Tribunal is accordingly modified. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-